

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

SERGIO MENDEZ JUAREZ,)	
)	
Plaintiff,)	
)	
v.)	1:14CV821
)	
UNITED STATES OF AMERICA,)	
et al.,)	
)	
Defendant(s).)	

ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff, a prisoner of the State of North Carolina, submitted a filing which the Court construes as a civil rights action pursuant to 42 U.S.C. § 1983 and/or Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971), because it contains allegations that unknown persons violated Plaintiff's constitutional rights. The form of the Complaint is such that serious flaws make it impossible to further process the Complaint. The problems are:

1. The filing fee was not received nor was a proper affidavit to proceed *in forma pauperis* submitted, with sufficient information completed or signed by Plaintiff, to permit review.
2. The Complaint is not on forms prescribed for use by this Court, nor is the information requested by such forms and necessary to process the Complaint pursuant to 28 U.S.C. § 1915A contained in Plaintiff's submission. See LR 7.1(e).
3. Plaintiff's submission consists of somewhat rambling pleadings containing more legal and historical inaccuracies than can be recounted in a practical

manner at this time. However, his true claim appears to be that the State of North Carolina had no jurisdiction to prosecute him criminally because he is a Mexican national. Not only is this incorrect, but such a claim constitutes an attack on his criminal conviction and is not proper in a § 1983 action. Instead, Plaintiff must bring that claim in a habeas petition under 28 U.S.C. § 2254 after exhausting any available state court remedies as to his claim.

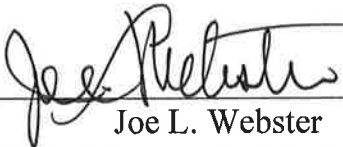
Consequently, the Complaint should be dismissed, but without prejudice to Plaintiff filing a new complaint or habeas petition, on the proper forms, which corrects the defects of the present Complaint. To further aid Plaintiff, the Clerk is instructed to send Plaintiff new § 1983 forms, instructions, an application to proceed *in forma pauperis*, and a copy of pertinent parts of Fed. R. Civ. P. 8 (*i.e.*, Sections (a) & (d)). If Plaintiff wishes instead to proceed under § 2254, he should request the proper forms from the Clerk's Office.

In forma pauperis status is granted for the sole purpose of entering this Order and Recommendation.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation. The Clerk is instructed to send Plaintiff § 1983 forms, instructions, an application to proceed *in forma pauperis*, and a copy of pertinent parts of Fed. R. Civ. P. 8 (*i.e.*, Sections (a) & (d)).

IT IS RECOMMENDED that this action be dismissed *sua sponte* without prejudice to Plaintiff filing a new complaint or habeas petition, on the proper forms, which corrects the defects cited above.

This, the 3rd day of October, 2014.



Joe L. Webster
United States Magistrate Judge